



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2020-0726; FRL-10025-46-Region 4]

Air Plan Approval; North Carolina; Mecklenburg Miscellaneous Rules Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision to the Mecklenburg County portion of the North Carolina SIP, hereinafter referred to as the Mecklenburg Local Implementation Plan (LIP). The revision was submitted by the State of North Carolina, through the North Carolina Division of Air Quality (NCDAQ), on behalf of Mecklenburg County Air Quality (MCAQ) via a letter dated April 24, 2020, and was received by EPA on June 19, 2020. The revision updates several Mecklenburg County Air Pollution Control Ordinance (MCAPCO) rules incorporated into the LIP. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2020-0726 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or

comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9009. Mr. Adams can also be reached via electronic mail at adams.evan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

The Mecklenburg County LIP was submitted to EPA on June 14, 1990, and EPA approved the plan on May 2, 1991. *See* 56 FR 20140. Mecklenburg County is now requesting that EPA approve updates to the LIP for general consistency with the North Carolina SIP.¹ Mecklenburg County prepared three submittals in order to update the LIP and reflect regulatory and administrative changes that NCDAQ made to the North Carolina SIP since EPA's 1991 LIP approval. The three submittals were submitted as follows: NCDAQ transmitted the October 25, 2017, submittal to EPA but later withdrew it from review through a letter dated February 15, 2019. On April 24, 2020, NCDAQ resubmitted the October 25, 2017, update to EPA and also submitted the January 21, 2016, and January 14, 2019, updates. Due to an inconsistency with public notice at the local level, these submittals were withdrawn from EPA through a letter dated February 15, 2019. Mecklenburg County corrected this error, and NCDAQ submitted the updates to EPA in a submittal dated April 24, 2020.²

II. What Action is EPA Proposing to Take?

¹ Hereinafter, the terms "North Carolina SIP" and "SIP" refer to the North Carolina regulatory portion of the North Carolina SIP (i.e., the portion that contains SIP-approved North Carolina regulations).

² EPA notes that the April 24, 2020, submittal was received by EPA on June 19, 2020.

The April 24, 2020, submittal includes changes and updates to the following rules to more closely align them with their analog SIP-approved North Carolina regulations. The January 14, 2019, the submission includes changes and updates to MCAPCO Rules 2.0101, *Definitions*; 2.0201, *Classification of Air Pollution Sources*; 2.0202, *Registration of Air Pollution Sources*; 2.0302, *Episode Criteria*; 2.0303, *Emission Reduction Plans*; and 2.0304, *Preplanned Abatement Program*.³

The submittal also asks EPA to reincorporate the following rules into the LIP with a new effective date. The January 21, 2016, submission includes updates to the effective dates of the following rules: MCAPCO Rules 1.5301, *Special Enforcement Procedures*; 1.5302, *Criminal Penalties*; 1.5303, *Civil Injunction*; 1.5304, *Civil Penalties*; 1.5306, *Hearings*; 1.5307, *Judicial Review*; 2.0301, *Purpose*; and 2.0305, *Emission Reduction Plant: Alert Level*. The text of these rules has not changed. The remainder of this section discusses the proposed changes to Rules 2.0101, 2.0201, 2.0202, 2.0302, 2.0303, and 2.0304.

Rule 2.0101, “*Definitions*”

The April 24, 2020, revision modifies Rule 2.0101, *Definitions*, under Article 2.0000, *Air Pollution and Control Regulations and Procedures*, by updating terms and definitions, the formatting of units, and references to more closely align the rule with the SIP-approved state rule at 15A NCAC 02D .0101, *Definitions*. Rule 2.0101 was first approved by EPA into the LIP on May 2, 1991 (56 FR 20140), and defines certain terms used in Article 2.0000. EPA most recently approved updates to 15A NCAC 02D .0101 in the SIP on July 17, 2020. *See* 85 FR 43461.

The changes to Rule 2.0101 reorganize the defined terms alphabetically, add several terms and definitions, and delete one term and definition. The revisions add the terms “Administrator,” “Approved,” “Capture system,” “Control device,” “Day,” “Emission,”

³ The April 24, 2020 submittal contains changes to other Mecklenburg LIP-approved rules that are not addressed in this notice. EPA will be acting on those rules in separate actions.

“Person,” “PM2.5,” and “Transportation facility,” and remove the term “Smoke density measuring device.”⁴

The terms and definitions in the revised version of Rule 2.0101 and the SIP at 15A NCAC 02D .0101, *Definitions*, only have a few differences. These include several LIP-approved exceptions in the definition of “Construction” at 2.0101(9)(a-d). These exemptions apply to a limited number of activities such as clearing and grading, building access roads, driveways, and parking lots, building and installing underground pipe work, and building ancillary structures, including fences and office buildings that are not a necessary component of an air contaminant source, equipment, or associated cleaning device for which a permit is required.

EPA is proposing to approve the updates to Rule 2.0101 because they better align the LIP with the SIP and will not interfere with any applicable Clean Air Act (CAA) requirements.⁵

Rule 2.0201, *Classification of Air Pollution Sources*

The April 24, 2020, revision modifies Rule 2.0201, *Classification of Air Pollution Sources*, under Article 2.0000, by making grammatical updates and clarifying that the classification system applies to all air pollution sources governed by the Article. Rule 2.0201 was first approved by EPA into the LIP on May 2, 1991 (56 FR 20140), and establishes a system to classify air pollution sources covered by Article 2.0000. The edits align⁶ the rule with the SIP-approved state rule, 15A NCAC 02D .0201, *Classification of Air Pollution Sources*. EPA most recently incorporated updates to the state rule in North Carolina’s SIP on April 10, 2019. See 84 FR 14308. EPA is proposing to approve the updates to Rule 2.0201 because they better align the LIP with the SIP and will not interfere with any applicable CAA requirements.

⁴ The terms “Approved,” “Capture system,” “Control device,” “Day,” “Emission,” and “Person” also appear in the LIP-approved version of Rule 2.0901 with minor differences. The April 24, 2020 submittal seeks to remove these terms from Rule 2.0901, *Definitions*, under Article 2.9000, *Volatile Organic Compounds*, in effect moving them to Rule 2.0101; however, EPA is not proposing to act on the removal of these terms from Rule 2.0901 at this time. EPA will act on the changes to Rule 2.0901 in a separate action.

⁵ Section 110(l) of the CAA prohibits EPA from approving a SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act.

⁶ The only differences between the revised version of 2.0201 and the SIP-approved version of 15A NCAC 02D .0201 tailor the rules to reference their respective governing bodies.

Rule 2.0202, *Registration of Air Pollution Sources*

The April 24, 2020, revision modifies Rule 2.0202, *Registration of Air Pollution Sources*, by adding a reference to the governing North Carolina statute at G.S. 143-215.107(a)(4). Rule 2.0202 was first approved by EPA into the LIP on May 2, 1991 (56 FR 20140), and identifies the information that an air pollution source must submit in order to register the source with MCAQ. The minor edits align⁷ the rule with the current SIP-approved rule, 15A NCAC 02D .0202, *Registration of Air Pollution Sources*. EPA most recently incorporated updates to the state rule in North Carolina's SIP on April 10, 2019. *See* 84 FR 14308. EPA is proposing to approve the updates to Rule 2.0202 because they better align the LIP with the SIP and will not interfere with any applicable CAA requirements.

Rule 2.0302, *Episode Criteria*

The April 24, 2020, revision modifies Rule 2.0302, *Episode Criteria*, by updating the format of units, updating who proclaims air quality alerts and warnings and declarations of emergency at various pollutant levels requiring abatement actions from the Director of MCAQ with concurrence of the Governor, removing obsolete pollutant levels triggering such proclamations or declarations, and renumbering the subsections as a result of the aforementioned changes. Rule 2.0302 was first approved by EPA into the LIP on May 2, 1991 (56 FR 20140), and establishes guidance for the Director on when to issue an air pollution alert. The edits to Rule 2.0302 align⁸ the rule with the current SIP-approved rule, 15A NCAC 02D .0302, *Episode Criteria*. EPA most recently incorporated updates to the state rule in North Carolina's SIP on April 10, 2019. *See* 84 FR 14308. EPA is proposing to approve the updates to Rule 2.0302 because they better align the LIP with the SIP and will not interfere with any applicable CAA requirements.

⁷ The only differences between the revised version of 2.0202 and the SIP-approved version of 15A NCAC 02D .0202 tailor the rules to reference their respective governing bodies.

⁸ The only differences between the revised version of 2.0302 and the SIP-approved version of 15A NCAC 02D .0302 tailor the rules to reference their respective governing bodies.

Rule 2.0303, *Emission Reduction Plans*

The April 24, 2020, revision modifies Rule 2.0303, *Emission Reduction Plans*, by making updates to references. Rule 2.0303 was first approved by EPA into the LIP on May 2, 1991 (56 FR 20140), and establishes when persons responsible for operating an air pollution source must take air pollution alert, warning, or emergency actions. The revisions add a cross-reference to Rule 2.0304, *Preplanned Abatement Program*, described below. The edits align⁹ the rule with the current SIP-approved rule, 15A NCAC 02D .0303, *Emission Reduction Plans*. EPA most recently incorporated updates to the state rule in North Carolina's SIP on April 10, 2019. *See* 84 FR 14308. EPA is proposing to approve the updates to Rule 2.0303 because they better align the LIP with the SIP and will not interfere with any applicable CAA requirements.

Rule 2.0304, *Preplanned Abatement Program*

The April 24, 2020, revision modifies Rule 2.0304, *Preplanned Abatement Program*, by making updates to references. Rule 2.0304 was first approved by EPA into the LIP on May 2, 1991 (56 FR 20140), and establishes who must prepare a plan to reduce emissions during any air pollution episode. The edits align¹⁰ the rule with the current SIP-approved rule, 15A NCAC 02D .0304, *Preplanned Abatement Program*. EPA most recently incorporated updates to the state rule in North Carolina's SIP on April 10, 2019. *See* 84 FR 14308. EPA is proposing to approve the updates to Rule 2.0304 because they better align the LIP with the SIP and will not interfere with any applicable CAA requirements.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to approve MCAPCO Rules 1.5301 - *Special Enforcement Procedures*; 1.5302 -

⁹ The only differences between the revised version of 2.0303 and the SIP-approved version of 15A NCAC 02D .0303 tailor the rules to reference their respective governing bodies.

¹⁰ The only differences between the revised version of 2.0304 and SIP-approved version of 15A NCAC 02D .0304 tailor the rules to reference their respective governing bodies.

Criminal Penalties; 1.5303 - *Civil Injunction*; 1.5304 - *Civil Penalties*; 1.5306 - *Hearings*; 1.5307 - *Judicial Review*; 2.0301 - *Purpose*; and 2.0305 - *Emission Reduction Plant: Alert Level*, all of which have an effective date of December 15, 2015; as well as MCAPCO Rules 2.0101 - *Definitions*; 2.0201 - *Classification of Air Pollution Sources*; 2.0202 - *Registration of Air Pollution Sources*; 2.0302 - *Episode Criteria*; 2.0303 - *Emission Reduction Plans*; and 2.0304 - *Preplanned Abatement Program*, all of which have an effective date of December 18, 2018, into the Mecklenburg County portion of the North Carolina SIP to update the rules to more closely align with their analog North Carolina rules in the SIP. EPA has made and will continue to make the SIP generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the aforementioned revisions to the Mecklenburg LIP. Specifically, EPA is proposing to approve revisions to MCAPCO Rules 1.5301 - *Special Enforcement Procedures*; 1.5302 - *Criminal Penalties*; 1.5303 - *Civil Injunction*, 1.5304 - *Civil Penalties*; 1.5306 - *Hearings*; 1.5307 - *Judicial Review*; 2.0101 - *Definitions*; 2.0201 - *Classification of Air Pollution Sources*; 2.0202 - *Registration of Air Pollution Sources*; 2.0301 - *Purpose*; 2.0302 - *Episode Criteria*; 2.0303 - *Emission Reduction Plans*; 2.0304 - *Preplanned Abatement Program*; and 2.0305 - *Emission Reduction Plant: Alert Level*. EPA is proposing to approve these revisions because they are consistent with the CAA.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided they meet the criteria of the CAA. This proposed action merely proposes to approve

state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of

Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 28, 2021.

John Blevins,

Acting Regional Administrator,

Region 4.

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